STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

AGL RESOURCES INC., NICOR INC., and NORTHERN ILLINOIS GAS COMPANY d/b/a NICOR GAS COMPANY	)	
Application for Approval of a Reorganization pursuant to Section 7-204 of the Illinois Public Utilities Act.	)	Docket No. 11-0046

JOINT APPLICANTS' POST-TRIAL REPLY BRIEF

Dated: September 1, 2011

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AGL Resources Inc. ("AGL"), Nicor Inc. and Northern Illinois Gas Company d/b/a Nicor Gas Company ("Nicor Gas") (collectively "Joint Applicants" or "JA") hereby file with the Illinois Commerce Commission ("Commission") this Post-Trial Reply Brief addressing issues subject to the July 19-20, 2011 evidentiary hearings in this proceeding.[1]

I. INTRODUCTION

The Joint Applicants' evidentiary presentation and Initial Brief have demonstrated conclusively that the proposed reorganization ("Reorganization") meets the relevant requirements of the Public Utilities Act ("Act") and should be approved by the Commission. *See* 220 ILCS 5/7-101, 7-204, 7-204A. While the Joint Applicants evidentiary presentation shows that the Reorganization meets the requirements of the Act, the Joint Applicants have worked diligently to resolve issues raised by the Commission Staff ("Staff") and Intervenors. As a result of these efforts, the Joint Applicants have agreed to numerous conditions proposed by Staff, which are highlighted in the Initial Briefs of the Joint Applicants and Staff.[2] JA IB at 8-11; Staff IB at 3-4. Efforts to resolve issues continued after evidentiary hearings, as reflected in the Stipulation filed on August 24, 2011 regarding Section 7-204(c). Only two contested issues remain between the Joint Applicants and Staff with respect to Section 7-204—compliance with Sections 7-204(b)(1) and (b)(7). JA IB at 13-27; Staff IB at 6-22. For the reasons set forth in the Joint Applicants' Initial Brief and this Reply Brief, the Commission should approve the proposed

[1] The Joint Applicants previously submitted their Initial and Reply Briefs on issues surrounding the approval of the proposed Operating Agreement, which will govern certain transactions between Nicor Gas and its current affiliates, as well as between Nicor Gas and AGL and AGL Services Company.

[2] The Joint Applicants also have resolved all of the competitive concerns of the Retail Energy Supply Association ("RESA") and Interstate Gas Supply of Illinois ("IGS") concerning customer choice and competition. Nicor Gas Ex. 8.0.

Reorganization subject to the conditions agreed to with Staff, as set forth in Attachment A hereto.[3]

Meanwhile, the arguments of Staff, the Illinois Attorney General ("AG"), the Citizens Utility Board ("CUB") (collectively "AG/CUB"), and Local Unions No. 19, 117, 134, 150, 176, 364, 461 and 701, International Brotherhood of Electrical Workers, AFL-CIO (collectively the "Union")[4] on the three remaining contested issues are entirely without merit. Staff, AG/CUB, and the Union largely ignore the plain language of Section 7-204. For example, Staff asserts unprecedented legal standards for both Sections 7-204(b)(1) and (b)(7), which are wholly unsupported by the Act, any prior Commission Order, or any other authority. Further, these parties compound their legal errors by making factual claims that are contrary to the evidence.

The remaining issues for the Commission's resolution are the following three items, each of which is addressed in the Joint Applicants' Initial Brief and below:

- Section 7-204(b)(1) – Staff wrongly claims the Joint Applicants have not demonstrated that "the proposed reorganization will not diminish the utility's ability to provide adequate, reliable, efficient, safe and least-cost public utility service." In particular, Staff argues that the Joint Applicants must have completed and documented *all* final integration plans months in advance of the Commission even approving the Reorganization. AG/CUB repeats Staff's argument with no evidentiary support of their own, and the Union joins in by arguing that the Joint Applicants are somehow required to make commitments relating to employment before the Reorganization can be approved. The legal standards Staff and Intervenors assert find no support in the Act, prior Commission Orders, or any other law. Moreover, the overwhelming evidence demonstrates that Nicor Gas will continue to operate in the same safe and efficient manner that it does today under its proposed new parent company, AGL, which has a long and successful history of operating six other gas utilities in a safe and cost-effective manner. Nicor Gas and AGL both operate gas utilities that provide safe, reliable, cost-

[3] A revised list of the conditions agreed-upon as between the Joint Applicants and Staff is submitted with this brief as Attachment A. This is the same list submitted with the Joint Applicants' Initial Brief as revised to now include the Stipulation of August 24, 2011 between Staff and the Joint Applicants with respect to the requirements of Section 7-204(c).

[4] The Union did not file any testimony in this proceeding, nor did it participate in any way during evidentiary hearings on Operating Agreement issues, which took place in May 2011, or in the evidentiary hearings that took place in July 2011.

effective service. There is absolutely no reason to believe that together they will suddenly be unable to continue that long and well-documented tradition.

- Section 7-204(b)(7) – Staff wrongly claims that Section 9-230 of the Act somehow applies to the approval of the Reorganization. The Joint Applicants have demonstrated that such a claim is contrary to the Act, and finds no support in prior Commission Orders. Further, Staff asks the Commission to speculate that Nicor Gas' post-merger capital costs will rise and, based on that speculation, to impose formulaic limits on capital structures in future rate cases years down the road. Staff's argument rests upon a wholly incorrect and unprecedented reading of the applicable legal standard, and on an undeniable act of speculation about the facts. In addition, Staff wrongly—and largely without evidence—discounts a reasonable resolution proposed by the Joint Applicants that would give the Commission even more assurance than the law requires. Finally, Staff's proposed "cap" on Nicor Gas' post-merger common equity ratio in future rate cases ties the hands of future Commissions.

- Section 7-204(c)(i) – AG/CUB stand alone in arguing that the Commission must find that savings will somehow inure to Nicor Gas as a result of the proposed Reorganization. Contrary to AG/CUB's claim, the Act does not require that there be savings; instead, it requires that the Commission determine the allocation of *any* savings resulting from the Reorganization. Indeed, prior Commission Orders have approved reorganizations under Section 7-204 where *no savings* have been identified by the applicants. Here, the evidence demonstrates that: (1) the Joint Applicants only expect savings in the near term from the combination of *non-regulated* activities; and (2) Nicor Gas already is, *by far*, the low-cost provider of distribution services in Illinois. Further, given the significant commitments made to maintain the full-time equivalent ("FTE") employee levels, and to honor the existing union contract, there has been no reasonable showing that savings will somehow inure to the benefit of Nicor Gas immediately following the proposed Reorganization.

In short, application of the proper legal standards to the evidentiary record fully supports Commission approval of the proposed Reorganization. Accordingly, for the reasons set forth in the Joint Applicants' Initial Brief and below, the Commission should approve the Reorganization and make the other findings and approvals requested by the Joint Applicants in this proceeding.

II. ARGUMENT

A. Staff And Intervenors[5] Fail To Rebut The Joint Applicants' Showing That The Proposed Reorganization Meets The Requirements Of Section 7-204(b)(1)

1. Staff And AG/CUB Rely On An Improper, *Ad Hoc* Legal Standard Created By Staff Witness Maple, Which Has No Support In The Act Or Prior Commission Orders

Section 7-204(b)(1) requires that the Commission find that "the proposed reorganization will not diminish the utility's ability to provide adequate, reliable, efficient, safe and least-cost public utility service." 220 ILCS 5/7-204(b)(1). Staff incorrectly argues in its Initial Brief that "the *only* means by which the Joint Applicants can satisfy this burden is to reveal to Staff and the Commission *their detailed final integration plans* for all of the various operations of the utility," months before the Reorganization is to take place. Staff IB at 6 (emphasis added). Nothing in the Act, prior Commission Orders, or any other authority supports this assertion. Indeed, Staff witness Maple, the originator of this *ad hoc* standard, failed to cite to any authority in his testimony to support this standard.[6] Staff's Initial Brief also contains no reference to any law, Commission Order or Rule supporting this claimed standard. In fact, the plain language of Section 7-204(b)(1) only requires a showing that Nicor Gas will retain the "*ability* to provide adequate, reliable, efficient, safe and least-cost public utility service" after the proposed Reorganization is completed. 220 ILCS 5/7-204(b)(1) (emphasis added). The Joint Applicants

[5] The Commission should summarily reject AG/CUB's arguments regarding the Joint Applicants' compliance with Section 7-204(b)(1), because AG/CUB has offered no evidence regarding this issue and their Initial Brief does nothing more than repeat Staff's incorrect legal standard and flawed factual analysis. AG/CUB IB at 6-10.

[6] Further refuting Mr. Maple's position is the fact that he also failed to articulate his claimed standard when he last presented testimony on Section 7-204(b)(1) in the reorganization involving MidAmerican Energy Company, Docket No. 05-0506. JA Cross Ex. 2.0. In that proceeding, Mr. Maple did not advocate for the standard he now asserts, yet, there he recommended that the Commission make the Section 7-204(b)(1) finding. In that proceeding, Mr. Maple's recommendation was based solely upon his review of the petition, the testimony of one of the utility's witnesses, and six data request responses. Tr. 821-22, 825-26 (Maple).

have presented substantial and compelling evidence that Nicor Gas will maintain its ability in each of these areas.

Not only is Staff's claimed legal standard wrong, it defies common sense. Staff's proposed standard would serve as an insurmountable impediment to any future reorganization, as it would be a practical impossibility for two entities proposing to merge to finalize their integration plans well *before* they have even received Commission approval to engage in a merger. In this regard, the testimony of Joint Applicants witness Linginfelter stands in stark contrast to that of Staff witness Maple.

Mr. Linginfelter is the Executive Vice President in charge of utility operations for AGL's six gas distribution utilities. Linginfelter Dir., JA Ex. 1.0, 1:11-14. He has been directly involved in AGL's acquisition of four of those gas distribution utilities over the past decade. *Id*. at 2:25-34; Linginfelter Sur., JA Ex. 13.0, 8:171-74. Based on that experience, Mr. Linginfelter testified, without contradiction from Mr. Maple or any other witness, that AGL "has a proven track record of merging and integrating companies safely and reliably." Linginfelter Sur., JA Ex. 13.0, 15:330-32, citing Linginfelter Reb., JA Ex. 8.0, 5:111-21. He further provided his commitment that Nicor Gas' "ability to provide adequate, reliable, efficient, safe and least-cost public utility service" will not degrade following the merger. Linginfelter Dir., JA Ex. 1.0, 10:201-05.

Mr. Linginfelter also testified that the current and ongoing integration process between AGL, Nicor Inc. and Nicor Gas personnel is going just as planned. Linginfelter Sur., JA Ex. 13.0, 11:234-13:273; Tr. 655-56 (Linginfelter). Indeed, work on final plans will continue through fall 2011 and up until the time of closing. Linginfelter Sur., JA Ex. 13.0, 12:265-13:273. Mr. Linginfelter further testified, again without contradiction, that the Joint Applicants have

utilized nearly 400 experienced individuals and expended more than 31,000 labor hours on integration work (as of May 30, 2011), and that AGL has the *ability*, as required under Section 7-204(b)(1), to continue operating Nicor Gas to meet that Section's standards. *Id*. at 11:229-12:264; JA Ex. 21.0 at NRE005573 and NRE005576-5584 (JA Response to Staff Data Request 1.01 and Exhibit 1 thereto).

In sharp contrast, Staff witness Maple admitted that he has absolutely no experience related to integration planning on behalf of an acquiring entity or an entity being acquired. JA Cross Ex. 1.0, Staff Response to JA-Staff Data Requests 4.17-4.18. Further, he did not, nor could he, point to a single Commission proceeding involving Section 7-204(b)(1) where participants were required to finalize and submit integration plans many months prior to obtaining Commission approval. The reason no such precedent exists is clear: such a standard simply makes no sense, and it is not required under the Act. Mr. Maple's attempt to create a new and wholly-impractical standard under 7-204(b)(1) should be rejected.

The Commission's analysis under Section 7-204(b)(1) is, in the plain language of the statute, to determine whether the applicants have the "*ability* to provide adequate, reliable, efficient, safe and least-cost public utility service" going forward. 220 ILCS 5/7-204(b)(1) (emphasis added). As discussed in the Joint Applicants' Initial Brief (at 13-21) and herein, and as amply demonstrated by the evidentiary record, there can be no serious doubt that the Joint Applicants have this ability. The proposed Reorganization will combine two companies that are industry leaders in safety and operational efficiency, and both AGL and Nicor Gas are committed to providing "high quality, safe and reliable service" to their respective customers. Linginfelter Dir., JA Ex. 1.0, 7:132-34, 9:196-10:201; D'Alessandro Dir., JA Ex. 2.0, 7:117-8:124; McCain Dir., JA Ex. 4.0, 5:88-89. Even Staff concedes that Nicor Gas "is currently

serving customers adequately, reliably, efficiently, safely, and at the least cost possible." Staff IB at 10. Under AGL's ownership, Nicor Gas will continue to provide adequate, reliable, efficient, safe and least-cost public utility service. Linginfelter Dir., JA Ex. 1.0, 9:194-10:201; D'Alessandro Dir., JA Ex. 2.0, 6:93-7:113; McCain Dir., JA Ex. 4.0, 5:88-105. Moreover, the Joint Applicants have reinforced their long history of actually providing safe, reliable and cost-effective service with numerous important commitments described in detail in the Joint Applicants' Initial Brief. These commitments are designed to provide additional assurance that Nicor Gas' customers will continue to enjoy the quality of service they have come to expect. JA IB at 2-4, 14-15.

In short, the Joint Applicants—who have over 150 years of combined history in the natural gas distribution business (*see* Linginfelter Reb., JA Ex. 8.0, 5:111-13)—have the demonstrated experience, ability and financial resources to satisfy the requirements of Section 7-204(b)(1).

2. Staff's Factual Claims Are Without Merit And Should Be Rejected

Assuming the submission of final integration plans has any bearing on the Section 7-204(b)(1) finding, which the Joint Applicants submit is not the case[7], the evidentiary record contains more than sufficient information about the Joint Applicants' integration activities as described in detail in the Joint Applicants' Initial Brief. JA IB at 15-16, 19-21. For example, the record shows that the integration process was carefully organized and commenced at the time the Reorganization was first announced; that nearly 400 representatives from AGL, Nicor Inc. and Nicor Gas have been involved with and generated over 3,500 pages of documentation relating to the Joint Applicants' integration planning; that the Transition Committee overseeing the

[7] It bears repeating that neither Staff nor Mr. Maple have ever identified even one authority purporting to require integration plans as a prerequisite to meeting the requirements of Section 7-204(b)(1).

integration activities has met on a bi-weekly basis beginning on January 6, 2011; that the Integration Team has met on a weekly basis beginning on January 18, 2011; and that the first step of understanding each company's processes, structures and practices has been completed and reported to the Chief Executive Officers of AGL and Nicor Inc. Linginfelter Reb., JA Ex. 8.0, 6:137-43; Tr. 369, 383, 402 (O'Connor); JA Ex. 20 at NRE 005112-5147 (JA Supp. Response to Staff Data Request RWB 3.08 and Att. 1); JA Ex. 21.0 at NRE005571, NRE005573-5575, NRE005576-5584, NRE005634-5648, NRE005870-5923 (JA Response to Staff Data Request 1.01 and Exhibit 1, Exhibit 4 Att. A and Exhibit 5 Att. A thereto); Tr. 697-98 (Linginfelter).

With respect to future operations, Staff claims, without any evidentiary support whatsoever, that "[a]ny significant shift in personnel or job duties would likely diminish the quality of service compared to Nicor Gas' current level." Staff IB at 11. The evidence shows otherwise. First, "*any*" change in personnel or job duties may well occur even absent the merger given that employees "quit, move, change jobs, are promoted, retire, and leave a company's employment for countless other reasons." Linginfelter Sur., JA Ex. 13.0, 10:220-22. Yet, Staff concedes that Nicor Gas "is currently serving customers adequately, reliably, efficiently, safely, and at the least cost possible" (Staff IB at 10), and Staff has never argued that it has any concern about Nicor Gas maintaining that service level absent the merger.

Second, AGL fully expects Nicor Gas' operations to continue to be run by "legacy" employees in the future, as has been the case with other utilities that have been previously acquired by AGL. Linginfelter Sur., JA Ex. 13.0, 9:187-94, 10:205-07; Tr. 661 (Linginfelter). Indeed, Mr. Linginfelter testified that "most of the people involved in the operations and safety

of the Nicor Gas system will be the ones performing those or similar tasks following the Reorganization." Linginfelter Sur., JA Ex. 13.0, 11:224-26.

Third, the Joint Applicants' commitment to retaining the same over-all number of FTEs likewise "assures that Nicor Gas will continue to have personnel who are familiar with the day-to-day obligations for operating its distribution, transmission and storage assets, as well as retain the expertise in procuring and managing its gas supply requirements." D'Alessandro Dir., JA Ex. 2.0, 7:105-07. In addition, as described in their Initial Brief, the Joint Applicants have agreed to numerous specific staffing conditions proposed by Staff witness Burk that are directly targeted to protecting the provision of reliable, efficient and safe service. JA IB at 10-11. Indeed, this specific pledge fully satisfied Staff witnesses Burk and Stoller concerning the Joint Applicants' commitment to operational safety. Burk Reb., Staff Ex. 18.0, 7:139-8:166; JA Ex. 13.2.

Finally, the Joint Applicants have demonstrated that they expect the Reorganization will permit them to provide future benefits to Nicor Gas' customers. *See*, *e.g.*, Linginfelter Dir., JA Ex. 1.0, 5:103-6:117, 7:138-39; D'Alessandro Dir., JA Ex. 2.0, 8:125-31; Tr. 671 (Linginfelter); Tr. 850 (D'Alessandro). The Joint Applicants provided uncontradicted evidence that the Reorganization will allow them to share best practices and that, over time, "this exchange of operational information will allow Nicor Gas to further improve its operations in a period when issues surrounding the purchase, storage and delivery of natural gas are becoming more complex on a daily basis." D'Alessandro Dir., JA Ex. 2.0, 8:125-29. Such operational improvements will, in turn, offset future cost increases related to operations for wages, healthcare and vehicle fuel costs. Tr. 850 (D'Alessandro). In addition, economies of scale resulting from the Reorganization will benefit customers in the changing natural gas landscape as, for example, "it

is more efficient to develop one system and share that cost over several operating companies than to develop and operate several different systems." Linginfelter Dir., JA Ex. 1.0, 6:111-14.

The evidentiary record contains substantial and compelling evidence that the proposed Reorganization amply meets the requirements of Section 7-204(b)(1) of the Act. Accordingly, the Commission should reject the contrary claims of Staff and AG/CUB.

3. The Union's Claims Are Contrary To The Act And The Undisputed Facts

The Union argues that the Joint Applicants' "failure to honor the collective bargaining agreement and to maintain the existing work force of Nicor Gas within the state of Illinois would compromise the utility's ability to provide adequate, reliable, efficient, safe and least-cost public utility service." Union IB at 4. Remarkably, the Union makes this claim despite offering literally *no* evidence to support it. The Commission has previously rejected the position of an intervening party in a Section 7-204 proceeding where that party failed to present any evidence, and it should also do so here. *In re Illinois-American Water Company, et al.*, Docket No. 01-0832, Order, Nov. 20, 2002, at 20 ("The Commission notes again that the Cities, despite having the opportunity to do so, did not offer any evidence in this proceeding."). The Union, in fact, did not even bother to appear at evidentiary hearings to cross-examine the Joint Applicants witness who presented unrebutted testimony concerning commitments to honoring the existing union contract and maintaining FTE levels. The Union's eleventh-hour claims are incorrect and should be rejected.

The record is replete with statements by Joint Applicants witnesses, including Messrs. Linginfelter, D'Alessandro and McCain, in support of these commitments. These witnesses' statements reflect the Joint Applicants' oft and publicly expressed intention for Nicor Gas to fully honor the existing union contract and to maintain the same level of FTEs in support of

Nicor Gas' operations and in Illinois for a period of three years following closing. *See*, *e.g.*, Tr. 407 (O'Connor); Tr. 572-73 (Reese); Tr. 664-65 (Linginfelter); Linginfelter Dir., JA Ex. 1.0, 7:144-45; McCain Dir., JA Ex. 4.0, 5:94-97; D'Alessandro Dir., JA Ex. 2.0, 6:95-97, 7:105-07. Not only were these commitments stated by the Joint Applicants under oath before the Commission, but the Joint Applicants also affirmed them in public filings made with the Securities and Exchange Commission ("SEC") in connection with the Reorganization. For example, statements about these commitments are found in the Form 8-Ks the Joint Applicants filed on December 7, 2010 with the SEC, which was the day after the merger agreement (JA Ex. 1.1) was executed.[8] The Union did not, and cannot, cite to any evidence that would undercut these commitments.

The Union's claim also is legally wrong. There is no legal basis for the relief the Union seeks. Neither Section 7-204(b)(1) nor any other applicable provision of the Act *require* the Joint Applicants to make commitments with respect to the existing union contract or staffing levels. Thus, the Union's position, besides being without any factual basis, is also without basis in law. It should be rejected.

B. Staff's And AG/CUB's Arguments Concerning The Requirements Of Section 7-204(b)(7) Are Without Legal Or Factual Support

1. Staff And AG/CUB Argue For Application Of Erroneous Legal Standards

Section 7-204(b)(7) imposes a single, straightforward requirement: "the proposed reorganization is not likely to result in any adverse rate impacts on retail customers." 220 ILCS 5/7-204(b)(7). Staff's assertion that the Commission must eliminate *any* risk of any potential increase in Nicor Gas' capital costs, entirely in isolation to the myriad other costs that combine

[8] Copies of these Form 8-Ks were provided to the Commission with the Joint Applicants' initial submission in Attachment A to the Application, *Information Required Pursuant to 220 ILCS 5/7-204A(a)(2)(ii).*

to comprise a utility's rates, is directly contrary to law. The statute governing this proceeding, Section 7-204, requires the Commission, in pertinent part, to find that it is *unlikely* that there will be an *adverse rate impact* resulting from the reorganization. Section 7-204(b)(7) does not call for—or authorize—the Commission to impose future conditions based on speculative or hypothetical risks. Moreover, it does not speak at all to the cost of capital or, for that matter, any single component cost included in a utility's revenue requirement or rates. Section 7-204(b)(7) speaks solely to protecting consumers from a *likely* increase in *rates*.

Rates, under Illinois law, are a function of a utility's total reasonable and prudent costs, not of any particular component costs. As noted in the Joint Applicants' Initial Brief, it is legally prohibited and factually improper to presume that rates could or would increase based on even a certain future change in one individual cost. JA IB at 25-26 (quoting *Commonwealth Edison Co. v. Illinois Commerce Comm'n*, 405 Ill. App. 3d 389, 410 (2nd Dist. 2010)). That is the essence of the prohibition on single-issue ratemaking.

In this case, the Joint Applicants have overwhelmingly demonstrated that it is unlikely that rates or, for that matter, overall costs will increase as a result of the Reorganization. *See* JA IB at 21-27. Critically, Staff's Initial Brief does not contest this conclusion; indeed, Staff offered *absolutely no evidence* that Nicor Gas' overall costs will increase. This, properly, is the end of the inquiry: The Joint Applicants have shown that there is no likelihood of a rate increase and that is exactly what—and all that—the law requires.

Staff, however, tries to twist Section 7-204(b)(7)'s plain reference to "rates" into a question of how the Reorganization might affect capital costs—a single utility cost component. Staff IB at 12. Given that nothing in Section 7-204 establishes such a standard, or for that matter even mentions the issue, Staff is forced instead to Section 9-230. *Id*. Staff's reliance on Section

9-230 is directly contrary to the statute's own language. Section 9-230, by its clear and unambiguous terms, applies in a case to determine "a reasonable rate of return upon investment for any public utility in any proceeding to establish rates or charges." 220 ILCS 5/9-230. This is not such a proceeding. Further, nothing in the language of Section 9-230 states or even implies that it is applicable to a Section 7-204 proceeding, and Staff cites no authority to the contrary. Instead, the Joint Applicants' review of Section 7-204 proceedings reveals no docket in which the Commission has found Section 9-230 to apply. Indeed, there has been only one other Section 7-204 proceeding after the 1997 amendment added subsection (b)(7) in which a party (the AG) even relied on Section 9-230 in connection with satisfying Section 7-204(b)(7). *In re SBC Communications Inc., et al.*, 1999 Ill. PUC LEXIS 738, Docket No. 98-0555, Order, Sept. 23, 1999, Part 1 at *297. In that docket, the Commission's analysis entirely ignored the AG's argument and found that the proposed merger was not likely to result in any adverse retail rate impacts. *Id*., Part 2 at *19-27.

The fact that Section 9-230 addresses capital costs in isolation has nothing to do with the fact that Section 7-204(b)(7) instructs the Commission, in a reorganization case, to consider overall rates, and not any cost in isolation. They are two different statutes, in two different Articles, establishing two different requirements, that apply in two different types of cases. Section 9-230 applies when the Commission is "determining a reasonable rate of return upon investment for any public utility in any proceeding to establish rates or charges." 220 ILCS 5/9-230. This is not such a case. As Staff witness Phipps herself acknowledged: "the application requests the Commission to make certain findings and approvals in particular of a corporate reorganization and certain affiliated interest agreements and accounting entries related

thereto." Tr. 772. Section 9-230, in short, directs the Commission to take actions in a future rate case; it does not specify or alter any standard applicable in this proceeding.

Staff's citation to a single case supporting its "one iota" standard under Section 9-230 is of no help to Staff.[9] Staff IB at 12. Nothing in this single "one iota" case, or the principle in general, calls for Section 9-230 to be applied outside of rate cases. Whether one iota or many, the requirements of Section 9-230 expressly apply only in a general rate case. In a reorganization case, the sole focus is on likely *overall* rate impact.

Staff's reliance on Section 9-230 is, perhaps unintentionally, instructive. Section 9-230's requirement that *in a rate case* any capital costs affected by an affiliation be removed is yet another reason why the Reorganization simply cannot run afoul of Section 7-204(b)(7)'s global rate impact test. Nicor Gas can *only* increase its rates after a rate case, and in such a case the Commission must—and surely will—eliminate any effect on the very factor, capital costs, that Staff points to. Given that any increased capital cost must be eliminated in any future rate case, there is no possibility that increased, unadjusted capital costs could ever affect rates. Thus, even if Staff's unsupported surmise about Nicor Gas' post-reorganization credit ratings were accurate, it would be *impossible* for any hypothetical decline in the credit ratings caused by affiliation with AGL to increase Nicor Gas' capital costs.[10]

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[9] The Joint Applicants believe the "one iota" standard to be inapplicable, but this question is immaterial to Section 7-204 and this Reorganization. Indeed, applying an exacting standard in future rate cases under Section 9-230 makes it *impossible* for the merger to even change Nicor Gas' capital costs in isolation. Staff also appears to presume that the Joint Applicants believe that Section 9-230 permits any increase in capital costs caused by an unregulated affiliation to be offset by decreases in other costs. *See* Staff IB at 12. This is untrue. In a rate case, Section 9-230 calls for eliminating the effect of increased risk on the capital structure. It says nothing about other costs, and the Joint Applicants never claimed that it did.

[10] This discussion also applies to refute AG/CUB's "endorsement" of Staff's incorrect application of the law. AG/CUB IB at 11-14. AG/CUB's only other argument regarding Section 7-204(b)(7) is that it has not been satisfied because the Joint Applicants have not foreclosed each and every possibility that the proposed Reorganization may somehow lead to increased costs to Nicor Gas. AG/CUB IB at 10-11. This, of course, is not the standard required by the plain language of Section 7-204(b)(7), which is to protect against reorganizations that will "likely" increase rates.

2. Staff's Speculation About A Decline In Nicor Gas' Credit Ratings Is Unsupported By The Evidence And Runs Counter To Well-Established Law

Staff's Initial Brief only underscores why the rating agency reports Staff witness Phipps relied upon are no longer applicable now that the Joint Applicants have agreed that AGL affiliates will not be able to borrow from a common money pool including Nicor Gas funds. Staff Ex. 15.01 (Standard & Poor's report, Mar. 22, 2011); Staff Ex. 15.02 (Moody's Investors Service report, Dec. 7, 2010); Cave Reb., JA Ex. 9.0, 11:228-37; Tr. 785-87 (Phipps). In particular, in a quote in Staff's Initial Brief, the Moody's report confirmed that "Nicor Gas' outlook could be stabilized … if Nicor Gas were not to be included in AGL's money pool." Staff IB at 14, quoting Staff Group Cross Ex. 2 (Public) at 21-22. Thus, there is absolutely no evidence that a downgrade of Nicor Gas is "likely" absent its participation in a common money pool with AGL affiliates. Cave Reb., JA Ex. 9.0, 7:141-52; Phipps Reb., Staff Ex. 15.0, 2:30-31. Indeed, the concern in the Moody's report has been rendered moot, as the Joint Applicants have committed that Nicor Gas *will not* participate in a common money pool with AGL affiliates. Cave Reb., JA Ex. 9.0, 11:228-37. Finally, Staff's theory runs counter to the well-established rule against single-issue ratemaking, which "makes it improper to consider in isolation changes in particular portions of a utility's revenue requirement." *Commonwealth Edison Co. v. Illinois Commerce Comm'n*, 405 Ill. App. 3d 389, 410 (2nd Dist. 2010).

3. Staff's Proposed Cap On Nicor Gas' Post-Merger Common Equity Ratio Is Unnecessary And Contrary To Law

Although Staff had numerous opportunities to propose how the Joint Applicants could satisfy Ms. Phipps' concerns relating to Section 7-204(b)(7), she chose instead to repeatedly criticize the Joint Applicants' proposals and did not make any proposal of her own until responding to the Administrative Law Judge ("ALJ") at evidentiary hearings. Tr. 792-93

(Phipps). Staff now argues that the Commission must impose that proposal—an unprecedented "cap" on Nicor Gas' post-merger common equity ratio—as a condition on the proposed Reorganization as the only means by which to satisfy Section 7-204(b)(7). Staff IB at 22. AG/CUB similarly argue that the Commission must approve Staff's proposal "or a comparable methodology" in order to satisfy Section 7-204(b)7). AG/CUB IB at 14-15.

As an initial matter, Staff's proposal is unnecessary given that: (1) the Joint Applicants are not seeking a rate increase as part of the proposed Reorganization; and (2) they have agreed with Staff to fix the base rates of Nicor Gas at their current rates for a period of three years following the closing of the proposed Reorganization. O'Connor Dir., JA Ex. 6.0, 7:133-34; Linginfelter Reb., JA Ex. 8.0, 18:417-19; Cave Sur., JA Ex. 14.0, 5:101-03; August 24, 2011 Stipulation. The proper time to consider this issue is if and when a future case is initiated concerning Nicor Gas' rates, not now. Moreover, at that time, the Commission will appropriately apply Section 9-230, precisely as it has in the over 100 rate case proceedings that have come before it in the last ten years. August 16, 2011 Stipulation, Appendix A.

The proposal put forward by Staff for the first time at evidentiary hearings must also be rejected because it would forever prohibit Nicor Gas from earning a fair and reasonable return on its investment, which would be contrary to law. The legal standards applicable to Nicor Gas' entitlement to a fair and reasonable return on its investment are well established:

> These classic and enduring pronouncements were set out by the United States Supreme Court in [the] *Bluefield Water Works*... and *Federal Power Comm'n v. Hope Natural Gas Co.* ... cases. A public utility has a constitutional right to a return that is 'reasonably sufficient to assure confidence in the financial soundness of the utility and [is] adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties.' The authorized return on equity 'should be commensurate with returns on investments in other enterprises

> having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.'

In re North Shore Gas Co., et al., Docket No. 09-0166/09-0167 Consol., Order, Jan. 21, 2010, at 89-90 (citations omitted). Staff's proposal is contrary to these well-established principles as it would tie the hands of future Commissions in imposing a "ceiling on Nicor Gas' post-merger equity ratio for ratemaking purposes" (Staff IB at 21), which would not afford Nicor Gas the opportunity to recover a fair and reasonable return. Therefore, Staff's proposal should be rejected.

4. Staff's Criticisms Of The Joint Applicants' Voluntary Additional Protections Are Without Evidentiary Support

The Joint Applicants went beyond proving that the Reorganization is not likely to raise rates and, in a good faith effort to resolve Staff's concerns, they voluntarily proposed a means to "evaluate any adverse rate impact" and explained "how such a proposal might work to eliminate any adverse rate impact." Cave Sur., JA Ex. 14.0, 6:131-32. The particular proposal was set forth in Joint Applicants witness Cave's surrebuttal testimony and excerpted in the Joint Applicants' Initial Brief. *Id*. at 7:152-8:161; JA IB at 26-27.

The Joint Applicants have agreed for ratemaking purposes to tie the credit rating of the post-merger utility for three years to Nicor Gas' pre-merger credit rating. *Id*. This eliminates any chance that a future a credit rating downgrade—which is the only potential risk factor Staff has identified—could result in increased costs or rates. Phipps Dir., Staff Ex. 9.0, 16:329-33. As the Joint Applicants pointed out in their Initial Brief (at 27, n.12), three years is a more than reasonable period for this additional protection because, as even Staff concedes, the value of data "diminish[es] as the time horizon lengthens." Staff IB at 20. As years go on, predicting what Nicor Gas' credit ratings, capital structure, and total capital costs would have been absent the

Reorganization becomes more and more an exercise in speculation and, after a full three years, it would be unreasonable to assume Nicor Gas' ratings and capital structure would remain perpetually unchanged. By freezing the existing AA credit rating for three years, the Joint Applicants are voluntarily offering to forgo any argument that Nicor Gas' own credit rating might change for reasons unrelated to the merger, or that another rating is more cost-effective.

The Joint Applicants have voluntarily proposed a means to address Staff's concerns stemming from Section 9-230, which the Joint Applicants have demonstrated does not even apply here. Accordingly, Staff's criticisms of the Joint Applicants' proposal should summarily be disregarded. Staff IB at 16-20. Moreover, the majority of Staff's arguments against the Joint Applicants' proposal are without evidentiary support. *Id*. Staff attempted to submit sworn critique of the Joint Applicants' proposal through the guise of a motion to strike, which motion was denied by the ALJ. Tr. 339-42. Indeed, in ruling on the motion to strike, the ALJ observed that the motion was more akin to attempted testimony than a motion. Tr. 339-41. Therefore, the Commission should ignore the arguments in Staff's Initial Brief purporting to describe the "problems" in the Joint Applicants' voluntary proposal. To the extent that Staff has questions about the mechanics of such a study, such as who would conduct it and who would pay for it (Staff IB at 16, 19), Staff is seeking a level of precision that is not required and certainly is not necessary at this stage. These issues should not be serious bars to resolution of this issue as long as the final mechanisms are fundamentally fair.

C. AG/CUB Stand Alone With Unsupported Arguments Concerning The Required Findings Under Section 7-204(c)

1. The Joint Applicants And Staff Have Resolved Staff's Concerns About The Requirements Of Section 7-204(c)

The Joint Applicants have now resolved with Staff all issues relating to approval of the Reorganization under Section 7-204(c) of the Act. *See* August 24, 2011 Stipulation. As set forth

in the Stipulation, the Joint Applicants and Staff recommend that the Commission approve the following terms in order to meet the requirements of Sections 7-204(c)(i) and 7-204(c)(ii):

1. The Joint Applicants and Staff agree that achieved savings at Nicor Gas resulting from the proposed Reorganization, if any, shall be flowed through to Nicor Gas customers as part of costs associated with the regulated intrastate operations for consideration in a future rate case filed by Nicor Gas.

2. In order to provide rate certainty for customers for a period following the Reorganization, and to allow the effect of savings, if any, to materialize, the Joint Applicants and Staff agree that the base rates of Nicor Gas shall be fixed at their current rates for a period of three years following the closing of the proposed Reorganization. Nicor Gas may file at its option a base rate case, in a time consistent with the provisions of the Act and the Commission's Rules, which would implement new distribution rates no earlier than three years following the date the proposed Reorganization closes. (To illustrate this proposal, if the Reorganization closes on November 1, 2011, Nicor Gas' base rates shall be fixed until November 1, 2014. Nicor Gas would be allowed to file a general rate case at a time that would allow new rates to go into effect on or after November 1, 2014.) The Joint Applicants retain the right to request that the Commission waive the timing provision set forth above if the financial integrity of Nicor Gas is jeopardized to the extent of negatively affecting customers. Under the terms of this provision, customers will receive all of the achieved savings, if any, associated with the test year in that case as an embedded reduction to the cost of service from that period forward.

3. Sections 9-220(h) and (h-1) of the Act, as set forth in Public Act ("PA") 097-0096 and PA 097-0239, require Nicor Gas, among other utilities, to enter into a sourcing agreement with a clean coal substitute natural gas ("SNG") brownfield facility and a clean coal SNG facility, or elect to file biennial rate cases in 2012, 2014, and 2016. As of August 24, 2011, Nicor Gas had not yet made such an election. Although it is unlikely at this time that Nicor Gas would not enter into the referenced SNG sourcing agreements, if Nicor Gas should elect not to enter into such a sourcing agreement, the Act then requires that Nicor Gas file biennial rate cases in 2012, 2014, and 2016. Notwithstanding the forgoing paragraph, rate case filings under such statutes are permitted.

4. The Joint Applicants and Staff agree, subject to the terms set forth with respect to Section 7-204(c)(i) above, that the costs incurred in accomplishing the proposed Reorganization shall not be recovered through Illinois jurisdictional regulated rates in this or any future proceeding. For clarification, the costs at issue (*i.e.*, Transaction Costs, Change in Control Costs, Financing Costs, Separation Costs, and Legal and Other Professional Costs) included in the Joint Applications' Supplemental Response to Staff Data Request RWB 3.01, Exhibit 5 (Staff Group Cross Exhibit 2 (Public) at 7-8 (NRE 004555-4556)), are the costs incurred in

accomplishing the proposed Reorganization, which will not be recovered through Illinois jurisdictional rates.

The Joint Applicants' agreement not to seek to recover the costs incurred in accomplishing the proposed Reorganization also moots AG/CUB's argument that merger-related costs should not be recovered from ratepayers. AG/CUB IB at 37-40. The above terms are included in Attachment A to this brief, which is a revised list of the conditions agreed-upon as between the Joint Applicants and Staff, and the Joint Applicants request that the Commission approve these terms as part of its approval of the proposed Reorganization.

2. AG/CUB's Arguments Insisting On The Quantification Of Savings Under Section 7-204(c)(i) Are Wholly Without Merit

As set forth above, the Joint Applicants have already agreed to flow through to customers any savings achieved at Nicor Gas resulting from the proposed Reorganization. August 24, 2011 Stipulation. This commitment does not appear to be sufficient to satisfy AG/CUB as they have consistently argued that the Joint Applicants must somehow quantify any as-yet-unknown savings before the Commission can approve the proposed Reorganization. Effron Dir., AG/CUB Ex. 3.0, 8:19-21 ("the Commission, prior to granting any merger approval, [should] order the Applicants to quantify all savings likely to occur as a result of the reorganization"); AG/CUB IB at 22 ("the merger should not be approved because the Commission lacks the evidence needed to rule on the allocation of any savings…").

AG/CUB's arguments regarding Section 7-204(c)(i) are premised on a false assumption—that there *must* be savings identified in order for the proposed Reorganization to be approved. This is not the standard under Section 7-204(c)(i), which solely requires the Commission to rule on the allocation of *any* savings resulting from the proposed reorganization, 220 ILCS 5/7-204(c)(i), and none of the prior Commission Orders cited by AG/CUB (IB at 28-

34) demonstrate otherwise. Indeed, as AG/CUB recognize (IB at 33-34), in the most recent Section 7-204 proceeding in which the Commission approved a reorganization, the joint applicants' evidentiary presentation with respect to Section 7-204(c)(i) demonstrated as follows:

> Although Frontier believed there may be future synergies and resulting savings in the future due to the reorganization, savings on an Illinois-specific basis have not been determined and the timing and actual amount of any such savings in Illinois would be speculative. Additionally, any such savings will likely be offset by expenses incurred to achieve them and associated with upgrading the network facilities to be acquired.

In re Frontier Communications Corporation, et al., Docket No. 09-0268, Order, Apr. 21, 2010, at 38. There the Commission concluded: "Regarding compliance with Section 7-204(c) the Commission finds that the allocation of any savings resulting from the proposed reorganization would flow through to the costs associated with the regulated intrastate operations for consideration in setting rates by the Commission in any future rate request." *Id*. at 39. As described above, the Joint Applicants have already agreed to flow through to Nicor Gas customers any savings achieved at Nicor Gas resulting from the proposed Reorganization. Further, none of the conditions imposed in the *Frontier* docket and cited by AG/CUB (at 34) related to the findings required under Section 7-204(c). Accordingly, AG/CUB fail in their attempt to distinguish that proceeding. Moreover, prior Commission Orders have approved reorganizations under Section 7-204 where *no savings* have been identified by the applicants. *See*, *e.g.*, *In re Illinois-American Water Company*, Docket No. 01-0832, Order, Nov. 20, 2002, at 18-19 (recognizing the joint applicants' position that "no synergy savings are expected to occur in Illinois as a result of the proposed reorganization" and finding "under Section 7-204(c)(i) that, to the extent any synergy savings resulting from the proposed reorganization are reflected in future rate case test years, such savings should be allocated in full to customers"); *In re Nuon*

Acquisition Sub, Inc., Docket No. 01-0480, Order, Nov. 27, 2001, at 10 (approving the proposed reorganization of the joint applicants where "the anticipated cost savings from the proposed merger are $ 0").

Thus, contrary to AG/CUB's position, there is no requirement in the Act that there must be savings from the proposed Reorganization. Indeed, the manner in which AG/CUB has framed the issue requires the Joint Applicants to prove a negative—*i.e.*, that there are no savings—which the Joint Applicants cannot practically do. What the Joint Applicants have done is provide evidence showing that they have not identified any immediate savings to Nicor Gas from the Reorganization, particularly given the undeniable fact that expenses related to the Joint Applicants' commitments to maintaining workforce levels and honoring the existing union contract will not only continue but escalate. *See* JA IB at 28-30. This showing meets the requirements of Section 7-204(c)(i).

AG/CUB argue that there is an inconsistency in the Joint Applicants' position that there will be no immediate savings at the utility, even though the Joint Applicants have not performed a formal review of the long-term operational benefits to Nicor Gas customers. AG/CUB IB at 21. AG/CUB is wrong—there is no inconsistency in the Joint Applicants' position. The Joint Applicants' Initial Brief described in detail the evidence showing that there will be no short-term savings at the utility, while they expect long-term[11] benefits, including possible savings, as a result of the Reorganization. JA IB at 28-30. To summarize, this evidence shows that: (1) it is undisputed that Nicor Gas already is by far the low-cost provider of natural gas distribution service in Illinois; (2) it is undisputed that Nicor Gas will continue to incur an increasing level of personnel expenses related to the Joint Applicants' commitment to maintaining the same number

[11] AG/CUB also argue that Joint Applicants witnesses have been inconsistent in their "definition" of "long term" but all the quotes used by AG/CUB are consistent in pointing to a period of more than one year. AG/CUB IB at 20.

of FTEs and honoring the current union contract; and (3) the Joint Applicants expect enhancement in service over time as a result of the sharing of best practices and the combined company's operational efficiencies and economies of scale, which will position Nicor Gas to effectively manage cost escalations such as labor wage increases, cost increases for other benefits and vehicle fuel costs. *Id*. at 15, 28-30.

Moreover, as explained in the Joint Applicants' Initial Brief (at 13-14, 28-30) and herein, the Joint Applicants' position in this proceeding was informed by AGL's significant prior experience with natural gas utility mergers and acquisitions. AG/CUB attempts to discount the Joint Applicants' reliance on AGL's prior experience as "hardly sufficient evidence for the Commission to evaluate the proposed merger…." AG/CUB IB at 22. However, AG/CUB has not, and cannot, question the demonstrated experience of Joint Applicants witness Linginfelter who testified at length about how that experience informed the Joint Applicants' approach to the savings issue:

> You've identified a wonderful conundrum, your Honor, around an interaction or integration or transaction like this.
>
> I would give you a couple interesting notes. The first is that AGL Resources and Nicor Gas both have a very strong focus on cost control. It's in the DNA of both companies, I believe.
>
> And while this is a different deal than the others we've done in its scale and size and in the quality of Nicor Gas, it's a very high-quality company, we still believe that over time, we can find ways to manage costs better together than two separate companies.
>
> If I put that in the perspective of our other transactions, the two that we are talking about, NUI and VNG, both those we found opportunities that easier than I think we'll find in this deal, so we don't have as much certainty or inability to deliver on cost savings the way we do in those, but over time we believe we will.
>
> And for those companies during our ownership as parent, Virginia Natural Gas has no rate increase in more than a decade -- in fact, 15 years, but we owned the Company for 11 of those.

> We have a rate case pending that will be decided next year, and that's our first rate case in our over a decade of ownership.
>
> At Elizabethtown Gas, which is the largest of NUI, we prosecuted a rate case about a year and a half ago, and that was a very modest increase, far below inflation.
>
> And those two examples I think show our intensity around trying to manage costs, but there are clearly costs to achieve those things.
>
> So we lived in an environment where as long as we can deliver service and do a good job and find savings and spend the money to make those savings occur, we believe that's a good environment.
>
> * * *
>
> … We don't know all the costs that we are going to bear and we don't know all the savings, as I testified to a number of times and so have others, but we do think our ability to manage well in a combined company is good for customers ultimately around rates.

Tr. 672-74; *see also* Tr. 675-80. Mr. Linginfelter also specifically addressed the perceived inconsistency argued by AG/CUB by testifying that, even though no specific analysis has been performed, the Joint Applicants expect long-term operational benefits because that has been AGL's experience in each of the transactions that it has been a part of over the last decade or more. Tr. 595-96. Mr. Linginfelter further testified that, based on that experience, it is not surprising that no analysis of long-term benefits has yet been conducted because it will be "well into integration before we know what those costs and savings will be." Tr. 701. The record evidence therefore soundly refutes AG/CUB's argument that there is any inconsistency in the Joint Applicants' position.

AG/CUB had numerous opportunities in this proceeding to test the evidence that there are no immediate cost savings to the utility to be quantified and they have failed to provide a single reasonable basis to demonstrate otherwise.[12] Instead, AG/CUB continue to rely on

[12] This is perhaps not surprising given that the entirety of AG/CUB's substantive testimony in this proceeding amounted to less than twenty pages.

irrelevant data points to try to extrapolate purported "savings," arguing that that the Commission should accept these unfounded assumptions, including the projections of savings identified in the merger application of WPS Resources Corporation and Peoples Energy Corporation, as approved by the Commission in Docket No. 06-0540 ("WPS/PEC"), and the "separation costs" estimated as part of the Joint Applicants' initial filing. AG/CUB IB at 16-17.

The Joint Applicants anticipated these arguments from AG/CUB and fully refuted each of them in their Initial Brief. JA IB at 32-35. For example, the Joint Applicants explained in their Initial Brief (at 32-34) why the WPS/PEC merger is not a reasonable comparison as there is no evidentiary similarity between that merger and this proceeding, and AG/CUB's Initial Brief (at 17-19), does not demonstrate otherwise. AG/CUB point to a settlement agreement entered into in the WPS/PEC merger as purportedly rebutting one of the distinctions the Joint Applicants made between that merger and this one—the Joint Applicants' commitment to maintaining the FTE levels for three years at Nicor Gas, and for certain safety compliance personnel for five years. O'Connor Reb., JA Ex. 11.0, 6:109-13. The commitment reflected in AG Cross Exhibit 3 (cited in AG/CUB IB at 18-19) does compare to the one made by the Joint Applicants to honor the union contract at Nicor Gas; however, Nicor Gas' commitment is much broader as it encompasses the entire company and all employees, both union and nonunion. Tr. 468 (O'Connor).

Further, the Joint Applicants demonstrated why AG/CUB's reliance on separation costs is flawed, because any savings associated with the estimated separation costs identified by the Joint Applicants in their initial filing will occur primarily at the holding company level. JA IB at 34. And while AG/CUB notes that there may be additional separation costs "associated with the highest ranking Nicor Inc. executives" (AG/CUB IB at 5), any purported savings associated with

the elimination of those positions would be diminished by the fact that the newly combined organization will still have a CEO and a CFO. Tr. 574 (Reese).

Finally, the Joint Applicants have also presented evidence fully rebutting AG/CUB's argument that Nicor Gas is allegedly "overearning" and demonstrated that this issue has no bearing on the Commission's required finding under Section 7-204(c)(i), which focuses on savings resulting from a reorganization, not past utility economic performance. JA IB at 34-35. In an attempt to somehow connect their "overearning" position to the relevant inquiry here, AG/CUB argue for the first time in their Initial Brief (at 35-37) that Mr. Effron's analysis of Nicor Gas' "overearning"—which is wholly unsubstantiated and flawed in any event—somehow shows it would be unfair to "trust" the Joint Applicants' sworn statements that they do not anticipate any immediate savings to Nicor Gas as a result of the proposed Reorganization. The Commission should disregard this line of argument in its entirety given that the evidence fully supports the Joint Applicants' position, which is further supported by the Commission's prior approvals of reorganizations under Section 7-204 where no savings were identified.

In sum, the Commission should find that the proposed Reorganization satisfies Section 7-204(c)(i) given that the Commission's analysis is appropriately limited to the evidence presented here demonstrating no immediate savings at the utility, as well as the Joint Applicants' agreement to flow any savings actually achieved through to the ratepayers.

III. CONCLUSION

The Initial Briefs of Staff, AG/CUB and the Union fail to rebut the Joint Applicants' evidentiary presentation demonstrating that the Reorganization meets the requirements of the Act. In light of the law and facts set forth above and in the Joint Applicants' Initial Brief, the Commission should reject the arguments of Staff, AG/CUB and the Union that the Joint

Applicants have somehow not met their burden as to the requirements of Sections 7-204(b)(1), (b)(7) and (c)(i). Accordingly, the Commission should make all the findings required by Section 7-204 and approve the Reorganization, and make the other findings and approvals requested by the Joint Applicants in this proceeding, including, but not limited to, approval of (1) an Operating Agreement; (2) a Services Agreement; (3) four agreements with Sequent Energy Management, LP ("Sequent"), AGL's wholesale gas marketing subsidiary—a Gas Exchange agreement, an Interstate Hub Service Agreement, an Intrastate Hub Service Agreement and a Base Contract for Sale and Purchase of Natural Gas ("NAESB")—as well as capacity release arrangements between Nicor Gas and Sequent in accordance with the Federal Energy Regulatory Commission's capacity release rules; and (4) the Tax Allocation Agreement Among Members of the AGL Resources Inc. Affiliated Group, and grant any other relief the Commission deems appropriate.

Dated: September 1, 2011

Respectfully submitted,

AGL RESOURCES INC., NICOR INC.,
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CERTIFICATE OF SERVICE

I, John E. Rooney, certify that I caused a copy of the Joint Applicants' Post-Trial Reply Brief to be served upon the service list in Docket No. 11-0046 on September 1, 2011.

/s/ John E. Rooney
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